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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/721,139 | 11/22/2000 | Richard Sutton Cherry | 08046-1-0020 | 2267 |
| 26135 | 7590 | 11/07/2005 | EXAMINER | |
| LOTT & FRIEDLAND, P.A. P.O. BOX 141098 CORAL GABLES, FL 33114-1098 | | | FADOK, MARK A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3625 | |

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/721,139

Applicant(s)

CHERRY, RICHARD SUTTON

Examiner

Mark Fadok

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Response to Amendment

The examiner is in receipt of applicant's response to office action mailed 2/9/2005, which was received 8/1/2005. Acknowledgement is made to the amendment to claims 1,5-12,14,17,18,21,26,27 and 31, leaving claims 1-31 as pending in the instant application. The applicant's amendment and arguments have been carefully considered and were found to be persuasive in overcoming the rejection of the drawings, specification and both the 112 and claim rejections. However after further search and consideration the new grounds of rejection follows:

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

USC 112 Sixth Paragraph Notification

Applicant has provided means-plus function language in the instant claims, which could be construed as having a narrower meaning emanating from specific embodiments found in the specification. Since it is the applicant's responsibility to invoke USC 112 6th paragraph, the examiner will treat the claims using the broadest reasonable interpretation unless the applicant responds to the office action invoking USC 112 6th paragraph and identifying the exact limitations that the applicant is reading into the claims from the specification. Please be advised that should the applicant invoke USC 112 6th paragraph in response to this office action the response may still be made final using the rationale that the applicant has added new subject matter to the claims. A lack of response to this notice will be construed as prosecution history estoppel indicating that the applicant does not wish to invoke USC 112 6th paragraph.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1,12 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase approximately is not definite therefore the examiner takes approximately 30 minutes to include any time after or before 30 minutes.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Ahluwalia (US 6,728,685).

In regards to claims 1-29, Ahluwalia teaches all the features of the instant claims. For example, Ahluwalia teaches a buyer, broker and retailer that interact over the Internet including means for purchasing and tracking of the buyers purchased product (see drawings and abstract).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahluwalia in view of Official Notice.

In regards to claims 30 and 31, Ahluwalia teaches tracking product (FIG 1), but does not specifically mention that a GPS system is used to track the product. The examiner takes Official Notice that tracking of product wirelessly using GPS systems was old and well known in the art at the time of the invention. It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Ahluwalia the tracking of the product using GPS, because the use of this tracking will minimize the risk that the customer will become inconvenienced and dissatisfied with the merchant's on-line system.

Response to Arguments

Applicant's arguments with respect to claims 1-31 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(571) 272-6755**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(571) 272-7159**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is **(571) 272-3600**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

(571) 273-8300 [Official communications; including

After Final communications labeled

"Box AF"]

(571) 273-6755 [Informal/Draft communications, labeled

"PROPOSED" or "DRAFT"]



Mark Fadok

Primary Examiner